

1 **Appendix One:**

2
3 **Integrated Instruction and Special Verdict Form –**
4 **Section 1983 Claim –**
5 **Excessive Force (Stop, Arrest, or other “Seizure”)**
6

7
8
9 **Instructions**

10
11 **Section 1983**
12

13 [Plaintiff] is suing under Section 1983, a civil rights law passed by Congress that provides
14 a remedy to persons who have been deprived of their federal [constitutional] [statutory] rights under
15 color of state law.
16

17 **Elements of Claim**
18

19 [Plaintiff] must prove both of the following elements by a preponderance of the evidence:
20

21 First: [Defendant] acted under color of state law.
22

23 Second: While acting under color of state law, [defendant] deprived [plaintiff] of a federal
24 [constitutional right] [statutory right].
25

26
27 I will now give you more details on action under color of state law, after which I will tell you
28 the elements [plaintiff] must prove to establish the violation of [his/her] federal [constitutional right]
29 [statutory right].
30

31 **Action Under Color of State Law**
32

33 The first element of [plaintiff]’s claim is that [defendant] acted under color of state law. This
34 means that [plaintiff] must show that [defendant] was using power that [he/she] possessed by virtue
35 of state law.
36

37 A person can act under color of state law even if the act violates state law. The question is
38 whether the person was clothed with the authority of the state, by which I mean using or misusing
39 the authority of the state.
40

41 By “state law,” I mean any statute, ordinance, regulation, custom or usage of any state. And
42 when I use the term “state,” I am including any political subdivisions of the state, such as a county
43 or municipality, and also any state, county or municipal agencies.

1 *[Insert appropriate instruction on action under color of state law. See Instructions 4.4.1*
2 *through 4.4.3.]*

3
4 Deprivation of a Federal Right

5
6 [I have already instructed you on the first element of [plaintiff]’s claim, which requires
7 [plaintiff] to prove that [defendant] acted under color of state law.]

8
9 The second element of [plaintiff]’s claim is that [defendant] deprived [him/her] of a federal
10 [constitutional right] [statutory right].

11
12 The Fourth Amendment to the United States Constitution protects persons from being
13 subjected to excessive force while being [arrested] [stopped by police]. In other words, a law
14 enforcement official may only use the amount of force necessary under the circumstances to [make
15 the arrest] [conduct the stop]. Every person has the constitutional right not to be subjected to
16 excessive force while being [arrested] [stopped by police], even if the [arrest] [stop] is otherwise
17 proper.

18
19 In this case, [plaintiff] claims that [defendant] used excessive force when [he/she] [arrested]
20 [stopped] [plaintiff]. In order to establish that [defendant] used excessive force, [plaintiff] must
21 prove both of the following things by a preponderance of the evidence:

22
23 First: [Defendant] intentionally committed certain acts.

24
25 Second: Those acts violated [plaintiff]’s Fourth Amendment right not to be subjected to
26 excessive force.

27
28 In determining whether [defendant]’s acts constituted excessive force, you must ask whether
29 the amount of force [defendant] used was the amount which a reasonable officer would have used
30 in [making the arrest] [conducting the stop] under similar circumstances. You should consider all
31 the relevant facts and circumstances (leading up to the time of the [arrest] [stop]) that [defendant]
32 reasonably believed to be true at the time of the [arrest] [stop]. You should consider those facts and
33 circumstances in order to assess whether there was a need for the application of force, and the
34 relationship between that need for force, if any, and the amount of force applied. The circumstances
35 relevant to this assessment can include *[list any of the following factors, and any other factors,*
36 *warranted by the evidence]*:

- 37
38 ● the severity of the crime at issue;
39 ● whether [plaintiff] posed an immediate threat to the safety of [defendant] or others;
40 ● the possibility that [plaintiff] was armed;
41 ● the possibility that other persons subject to the police action were violent or dangerous;
42 ● whether [plaintiff] was actively resisting arrest or attempting to evade arrest by flight;
43 ● the duration of [defendant]’s action;

- the number of persons with whom [defendant] had to contend; and
- whether the physical force applied was of such an extent as to lead to unnecessary injury.

The reasonableness of [defendant]’s acts must be judged from the perspective of a reasonable officer on the scene. The law permits the officer to use only that degree of force necessary to [make the arrest] [conduct the stop]. However, not every push or shove by a police officer, even if it may later seem unnecessary in the peace and quiet of this courtroom, constitutes excessive force. The concept of reasonableness makes allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are sometimes tense, uncertain, and rapidly evolving, about the amount of force that is necessary in a particular situation.

As I told you earlier, [plaintiff] must prove that [defendant] intended to commit the acts in question; but apart from that requirement, [defendant]’s actual motivation is irrelevant. If the force [defendant] used was unreasonable, it does not matter whether [defendant] had good motivations. And an officer’s improper motive will not establish excessive force if the force used was objectively reasonable.

What matters is whether [defendant]’s acts were objectively reasonable in light of the facts and circumstances confronting the defendant.

[Liability in Connection with the Actions of Another]

[If the case involves a claim that a defendant is liable for the actions of another, insert appropriate instruction here. See Instruction 4.6.1 (supervisory liability); Instruction 4.6.2 (liability for failure to intervene); Instructions 4.6.3 through 4.6.8 (municipal liability).]

Damages

[Insert appropriate instructions on damages here. See Instructions 4.8.1 through 4.8.3.]

Instructions Concerning Verdict Form

A verdict form has been prepared for your convenience. I will review this form with you now, and afterwards you will take it with you to the jury room.

[Form of special verdict read]

In order for you as a jury to answer a question, each juror must agree to the answer. In other words, your answers to each question must be unanimous. Your foreperson will write the unanimous answer of the jury in the space provided after each question, and will date and sign the form of special verdict when completed.

Nothing said in the verdict form is meant to suggest what your verdict should be. You alone have the responsibility for deciding the verdict.

Verdict Form

We, the jury, unanimously find the following by a preponderance of the evidence:

(1) Did [defendant] act under color of state law?

Answer: Yes _____ No _____

IF YOU ANSWERED "YES" TO PART 1, PROCEED TO PART 2. OTHERWISE, PLEASE STOP.

(2) Did [defendant] intentionally commit an act, under color of state law, that violated [plaintiff]’s Fourth Amendment right not to be subjected to excessive force?

Answer: Yes No

IF YOU ANSWERED "YES" TO PART 2, PROCEED TO PART 3. OTHERWISE, PLEASE STOP.

(3) Did [defendant]'s act, described in Part (2) above, cause injury to [plaintiff]?

Answer: Yes No

IF YOU ANSWERED "YES" TO PART 3, PROCEED TO PART (4)(A), AND SKIP PART (4)(B).

IF YOU ANSWERED "NO" TO PART 3, SKIP PART 4(A) AND PROCEED TO PART 4(B).

(4)(A) Please state the amount that will fairly compensate [plaintiff] for any injury [he/she] actually sustained as a result of [defendant]'s conduct.

Answer: \$ _____
(Fill in Dollar Figure)

1 (4)(B) Because we answered "No" to Part 3, [plaintiff] is awarded nominal damages in the
2 amount of \$ 1.00.
3
4

5 AFTER ANSWERING PART 4, PROCEED TO PART 5.
6
7

8 (5)(A) Did [defendant] act maliciously or wantonly in violating [plaintiff]'s rights?
9

10 Answer: Yes _____ No _____
11
12

13 IF YOU ANSWERED "YES" TO PART (5)(A), PROCEED TO PART (5)(B). OTHERWISE,
14 PLEASE STOP.
15
16

17 (5)(B) Do you award punitive damages against [defendant]?
18

19 Answer: Yes _____ No _____
20

21 If yes, in what amount?
22

23 Answer: \$ _____
24 (Fill in Dollar Figure)
25
26

27 SO SAY WE ALL, this ____ day of _____, 200[].
28
29

30 _____
Foreperson